

### **REMARKS**

In the Final Office Action, the Examiner rejected claims 1-9, 11-15, and 70-79, and withdrew claims 80-85 from consideration. By this paper, Applicants hereby amend claim 6 to remove the “adapted to” clause as suggested by the Examiner. This amendment does not add any new matter, nor does it necessitate a new search. In view of the foregoing amendment and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

### **Claim Rejections under 35 U.S.C. § 102**

In the Office Action, the Examiner rejected claims 1-9 and 11-15 under 35 U.S.C. § 102(b) as being anticipated by Roseen (WO 01/11134 A1, hereinafter “Roseen”). Applicants respectfully traverse this rejection.

### ***Legal Precedent and Guidelines***

First, the pending claims must be given an interpretation that is reasonable and consistent with the *specification*. See *In re Prater*, 415 F.2d 1393, 1404-05, 162 U.S.P.Q. 541, 550-51 (C.C.P.A. 1969) (emphasis added); see also *In re Morris*, 127 F.3d 1048, 1054-55, 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997); see also M.P.E.P. §§ 608.01(o) and 2111. Indeed, the specification is “the primary basis for construing the claims.” See *Phillips v. AWH Corp.*, No. 03-1269, -1286, at 13-16 (Fed. Cir. July 12, 2005) (*en banc*). One should rely *heavily* on the written description for guidance as to the meaning of the claims. See *id.*

Second, interpretation of the claims must also be consistent with the interpretation that *one of ordinary skill in the art* would reach. See *In re Cortright*, 165 F.3d 1353, 1359, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); M.P.E.P. § 2111. “The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation.” See *Collegenet, Inc. v.*

*ApplyYourself, Inc.*, 418 F.3d 1225, 75 U.S.P.Q.2d 1733, 1738 (Fed. Cir. 2005) (quoting *Phillips v. AWH Corp.*, 75 U.S.P.Q.2d 1321, 1326). The Federal Circuit has made clear that derivation of a claim term must be based on “usage in the ordinary and accustomed meaning of the words amongst artisans of ordinary skill in the relevant art.” *See id.*

Third, anticipation under section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Accordingly, the Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter. The prior art reference also must show the *identical* invention “*in as complete detail as contained in the ... claim*” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989).

Fourth, if the Examiner relies on a theory of inherency, the extrinsic evidence must make clear that the missing descriptive matter is *necessarily* present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 49 U.S.P.Q.2d 1949 (Fed. Cir. 1999) (Emphasis Added). The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient. *Id.* In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in

original). The Examiner, in presenting the inherency argument, bears the evidentiary burden and must adequately satisfy this burden. *See id.* Regarding functional limitations, the Examiner must evaluate and consider the functional limitation, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. *See* M.P.E.P. § 2173.05(g); *In re Swinehart*, 169 U.S.P.Q. 226, 229 (C.C.P.A. 1971); *In re Schreiber*, 44 U.S.P.Q.2d 1429, 1432 (Fed. Cir. 1997). If the Examiner believes the functional limitation to be inherent in the cited reference, then the Examiner “must provide some evidence or scientific reasoning to establish the reasonableness of the examiner’s belief that the functional limitation is an inherent characteristic of the prior art.” *Ex parte Skinner*, 2 U.S.P.Q.2d 1788, 1789 (Bd. Pat. App. & Inter. 1986).

Fifth, the *drawings* of the cited reference must be evaluated for what they *reasonably disclose and suggest* to one of ordinary skill in the art. *In re Aslanian*, 590 F.2d 911, 200 U.S.P.Q. 500 (CCPA 1979). Arguments based on dimensions of the drawing features are of little value where the reference does not disclose specific dimensions or any indication of whether the drawings are to scale. *See Hockerson-Halberstadt, Inc. v. Avia Group Int’l*, 222 F.3d 951, 956, 55 U.S.P.Q.2d 1487, 1491 (Fed. Cir. 2000).

***Features of Independent Claim 1 Omitted from Roseen reference***

Turning to the claims, the present independent claim 1 recites, *inter alia*, “a drying mechanism pneumatically coupled to the laundry enclosure via an air inlet and an air outlet, comprising: a vapor compression cycle system comprising a condenser, an evaporator, and a compressor disposed in a closed fluid path, wherein the condenser is configured to heat air upstream of the air inlet; and wherein the evaporator is configured to cool air downstream of the air outlet.”

First, the Roseen reference does not teach or suggest “a drying mechanism ... comprising: a vapor compression cycle system comprising a condenser, an evaporator, and a compressor disposed in a closed fluid path,” as recited by independent claim 1. The Roseen reference fails to disclose a vapor compression cycle system. The Roseen reference teaches a superheated steam system having only a compressor 50 and a condenser 54, but it does not include an evaporator as set forth in claim 1 and as understood by one of ordinary skill in the art. The Examiner equated heating element 46 to the claimed evaporator. The Applicants stress that the heating element 46 is not functionally equivalent to an evaporator, nor do the elements 50, 54, and 46 collectively function together as a vapor compression cycle as understood by one of ordinary skill in the art. In view of this deficiency, among others, the Roseen reference cannot anticipate independent claim 1 and its dependent claims.

Second, the Roseen reference does not teach or suggest “a drying mechanism ... comprising: a vapor compression cycle system comprising a condenser, an evaporator, and a compressor disposed in a closed fluid path,” as recited by independent claim 1. In sharp contrast, the Roseen reference teaches “that air can be discharged to the environment so that, finally, the circulating drying medium essentially will consist of wet steam.” Roseen, page 6, lines 20-22 (emphasis added). In other words, the Roseen reference discloses an open system, such that air can escape to the atmosphere. In view of this deficiency, among others, the Roseen reference cannot anticipate independent claim 1 and its dependent claims.

Third, the Roseen reference does not teach or suggest “a drying mechanism pneumatically coupled to the laundry enclosure via an air inlet and an air outlet, comprising: a vapor compression cycle system comprising a condenser, an evaporator, and a compressor disposed in a closed fluid path,” as recited by independent claim 1. The Roseen reference fails to disclose any “fluid path” as distinguished from the claimed “air

inlet” and “air outlet.” The compressor 50, the condenser 54, the fan 44, and the heating element 46 all circulate the same air (e.g., steam) circulating through the drum 12 and conduits 34 and 48. The Roseen reference teaches that the conduit 48 diverts some of the air through the compressor 50, while the air generally circulates through the loop 34. However, all of these conduits function only to circulate the air through the drum 12. The Roseen reference does not teach or suggest a “fluid path” having the condenser, evaporator, and compressor, as recited by claim 1. In view of this deficiency, among others, the Roseen reference cannot anticipate independent claim 1 and its dependent claims.

Fourth, the Roseen reference does not teach or suggest “the condenser is configured to heat air upstream of the air inlet,” as recited by independent claim 1. In sharp contrast, the Roseen reference discloses that the condenser 54 is configured to cool air (not heat it). The Roseen reference contrastingly uses the compressor 50 to increase the temperature of the air downstream of the condenser 54. Specifically, the Roseen reference discloses:

When it has been determined that the drying medium mainly consists of wet steam part of it is diverted via conduit 48 to the compressor 50 which compresses the steam so that the temperature increases to about 200°C. This superheated steam is conducted via conduit 52 to the condenser 54 where it is cooled and gives off its heat to the circulating steam in the circulation loop. Roseen, page 6, lines 23-29 (emphasis added).

In view of this passage, the Roseen reference fails to teach or suggest a condenser 54 configured to heat air, as recited by claim 1. Instead, the Roseen condenser 54 cools the air to condense and remove liquid vapor to facilitate the drying process. In view of this deficiency, among others, the Roseen reference cannot anticipate independent claim 1 and its dependent claims.

Fifth, the Roseen reference does not teach or suggest “the evaporator is configured to cool air downstream of the air outlet,” as recited by independent claim 1. As discussed above, the Applicants stress that the Roseen reference is completely missing an evaporator as recited by claim 1. The Examiner incorrectly equated the heating element 46 of Roseen with the claimed evaporator. Office Action, page 3. In sharp contrast, the Roseen reference discloses “the heating element 46 is activated so as to heat the circulating air which heats the laundry in the inner drum 12.” Roseen, page 6, lines 12-14 (emphasis added). Clearly, the heating element 46 is not configured or even capable of cooling air as recited by claim 1. In view of this deficiency, among others, the Roseen reference cannot anticipate independent claim 1 and its dependent claims.

For at least these reasons, among others, the Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 102.

**Claim Rejections under 35 U.S.C. § 103(a)**

The Examiner rejected claims 70-79 under 35 U.S.C. § 103(a) as being unpatentable over Roseen. The Applicants respectfully traverse this rejection. However, in view of the deficiencies noted above, the Applicants stress that the Roseen reference cannot support a *prima facie* case of obviousness of independent claim 1 and its dependent claims. For these reasons, among others, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103.

***Request Evidence to Support Official Notice***

Essentially, the Examiner has taken Official Notice of facts outside of the record that the Examiner apparently believes are capable of demonstration as being “well-known” in the art. Therefore, in accordance with M.P.E.P. § 2144.03, the Applicants hereby seasonably traverse and challenge the Examiner’s use of Official Notice. Furthermore, Applicants emphasize that the “well-known” facts asserted by the Examiner

are not of a “notorious character” and are clearly not “capable of such instant and unquestionable demonstration as to defy dispute.” See M.P.E.P § 2144.03. Specifically, the Applicants respectfully request that the Examiner produce evidence in support of the Examiner’s position as soon as practicable during prosecution and that the Examiner add a reference to the rejection in the next Official Action. If the Examiner finds such a reference and applies it in combination with the presently cited references, the Applicants further request that the Examiner specifically identify the portion of the newly cited reference that discloses the allegedly “well known” elements of the instant claim, as discussed above, or withdraw the rejection. If the Examiner relies only on personal knowledge, then the Applicants respectfully stress that the Examiner must provide an affidavit or declaration in support of such personal knowledge. See *id.*

In addition, the Applicants submit that the Examiner’s use of Official Notice is improper on a legal basis, because the Official Notice is a broad sweeping statement as to all features of the previously added claims 70-79. Section 2144.03 of the Manual of Patent Examining Procedure specifically states:

In **limited circumstances**, it is appropriate for an examiner to take official notice of facts not in the record or to rely on “common knowledge” in making a rejection, however such rejections should be **judiciously applied**.

...

Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While “official notice” may be relied on, these **circumstances should be rare** when an application is under final rejection or action under 37 CFR 1.113.

...

As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “**capable of such instant and**

**unquestionable demonstration as to defy dispute”** (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

...

For example, assertions of technical facts in the areas of esoteric technology or **specific knowledge of the prior art must always be supported by citation to some reference work** recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

...

*In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) (“[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The **facts constituting the state of the art** are normally subject to the possibility of rational disagreement among reasonable men and are **not amenable to the taking of such notice.**”).

...

Furthermore, as noted by the court in *Ahlert*, any facts so noticed should be of notorious character and **serve only to “fill in the gaps” in an insubstantial manner** which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection.

M.P.E.P. (Rev. 5, August 2006) § 2144.03, Pages 2100-133-136. In view of these passages, the Applicants reiterate that the Examiner’s use of Official Notice is improper and cannot stand, because the scope of the Official Notice is far beyond an *insubstantial gap* in the cited reference. In fact, the Examiner appears to be rejecting the *entire claims* based on Official Notice. Moreover, the Examiner’s Official Notice refers to the *general state of the art*, which the foregoing legal precedent clearly precludes.

#### ***Request Evidence to Support Equivalency***

It appears that the Examiner has equated certain features of the Roseen reference with those of the present claims, even though the Roseen reference does not teach or suggest any equivalence between these features. If the Examiner believes that certain features and/or equivalents are well known in the prior art, then the Applicants hereby seasonably traverse and challenge the Examiner’s position and request evidence in



support of the Examiner's position as soon as practicable during prosecution. *See* M.P.E.P. § 2144.03 and § 2144.06.

**Conclusion**

Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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